

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

CARRINGTON MORTGAGE SERVICES,  
LLC,

Case No. 2:15-cv-00668-JCM-CWH

## ORDER

Plaintiff,

V.

RLP MERCER VALLEY, LLC, et al.,

## Defendants.

Presently before the court is plaintiff Carrington Mortgage Services, LLC’s (“Carrington”) motion for reconsideration. (ECF No. 98). Defendant Shadow Springs Community Association (“Shadow Springs”) filed a response. (ECF No. 104). Carrington did not file a reply and the time to do so has passed.

17 Also before the court is Carrington's motion for attorney's fees. (ECF No. 99). Shadow  
18 Spring filed a response (ECF No. 107), to which Carrington replied (ECF No. 110).

19 | I. Facts

20 This case involves a dispute over real property located at 6232 Mercer Valley Street,  
21 North Las Vegas, Nevada, 89081 (the “property”). (ECF No. 1)

22 On July 8, 2008, Francisco and Esperanza De Mesa (the “De Mesas”) purchased the  
23 property. (ECF No. 69). The De Mesas financed the purchase with a loan in the amount of  
24 \$184,110.00 from Taylor, Bean & Whitaker Mortgage Corp. (“Taylor”). (ECF No. 58-2).  
25 Taylor secured the loan with a deed of trust, which it recorded July 24, 2008. *Id.* The deed of  
26 trust identified Taylor as the lender, Equity Title of Nevada as the trustee, and Mortgage  
27 Electronic Registration Systems, Inc. (“MERS”) as the beneficiary as nominee for the lender and  
28 lender’s successors and assigns. *Id.*

1       On August 12, 2012, a corporate assignment of deed of trust was recorded, whereby  
2 MERS assigned all beneficial interest in the deed of trust and note to Bank of America, N.A.  
3 (“BANA”), successor by merger to BAC Home Loans Servicing, LP f/k/a Countrywide Home  
4 Loan Servicing, LP (“BAC Home Loans”). (ECF No. 69). On February 3, 2015, an assignment  
5 of deed of trust was recorded, whereby BANA as successor by merger to BAC Home Loans,  
6 assigned all beneficial interest in the deed of trust to Carrington. *Id*.

7       On February 18, 2010, Shadow Springs, through its agent defendant Red Rock Financial  
8 Services, LLC (“Red Rock”), recorded a notice of delinquent assessment lien (the “lien”) against  
9 the property for the De Mesas failure to pay Shadow Springs in the amount of \$788.60. (ECF  
10 No. 69). On April 2, 2010, Shadow Springs recorded a notice of default and election to sell  
11 pursuant to the lien, stating an amount due of \$1,731.41. *Id.*

12       On June 4, 2010, Carrington’s predecessor in interest requested from Shadow Springs the  
13 superpriority amount of the lien. (ECF No. 70). On June 21, 2010, Shadow Springs provided a  
14 payoff ledger of the De Mesas’ delinquent payment history. (ECF No. 89-4). The payoff ledger  
15 shows an outstanding balance of \$2,197.95 but does not state what portion of the balance  
16 constitutes the superpriority portion of the lien. *Id.* The ledger also does not include charges for  
17 maintenance and nuisance abatement. *Id.* The ledger does state, however, that Shadow Springs’  
18 monthly assessments against the property were \$52.00. *Id.*

19       Carrington’s predecessor in interest used the ledger to calculate the superpriority amount  
20 as \$468.00, the sum of nine months of assessments. *Id.* On July 16, 2010, Carrington’s  
21 predecessor in interest sent a letter and a check in that amount to Shadow Springs. *Id.* The letter  
22 explained that the check was the sum of nine months of common assessments and intended to  
23 pay off the superpriority portion of the lien. *Id.* Shadow Springs rejected the check without  
24 explanation. (ECF Nos. 69, 70).

25       On January 11, 2013, Shadow Springs recorded a notice of foreclosure against the  
26 property. (ECF No. 58-6). On February 6, 2013, Shadow Springs sold the property in a  
27 nonjudicial foreclosure sale to defendant RLP Mercer Valley, LLC (“RLP”) in exchange for  
28 \$7,000.00. (ECF No. 58-8). On February 13, 2013, RLP recorded the foreclosure deed with the

1 Clark County recorder's office. *Id.*

2 On April 13, 2015, plaintiff filed its original complaint in this action. (ECF No. 1). On  
3 April 24, 2017, plaintiff filed its first amended complaint. (ECF No. 58). The amended  
4 complaint alleges the following claims: (1) quiet title/declaratory relief pursuant to U.S.C. §  
5 2201, NRS 30.010, and NRS 40.010 against all defendants; (2) permanent injunction against  
6 Carrington; (3) wrongful/defective foreclosure against RLP; (4) breach of contract against the  
7 Shadow Springs; and (5) breach of the covenant of good faith and fair dealing against the  
8 Shadow Springs. *Id.*

9 On June 2, 2017, Shadow Springs filed crossclaims against Red Rock. (ECF No. 64).  
10 The crossclaims allege the following causes of action: (1) implied indemnity; (2) contribution;  
11 (3) apportionment; (4) express indemnity; (5) equitable indemnity; (6) breach of contract; and (7)  
12 declaratory relief. *Id.*

13 On July 3, 2018, the court denied Carrington's motion for summary judgment, partially  
14 on the grounds that Carrington did not tender the superpriority amount of the lien. (ECF No. 74).  
15 On December 26, 2018, Carrington moved for reconsideration. (ECF No. 88). On February 8,  
16 2019, the court granted Carrington's motion in light of an intervening change in controlling law.  
17 (ECF No. 96). The next day the clerk entered judgment in accordance with the court's order.  
18 (ECF No. 97).

19 Now, Carrington moves again for reconsideration, requesting that the court amend its  
20 February 8, 2019, order and vacate the clerk's judgment. (ECF No. 98). Carrington also moves  
21 for attorney's fees. (ECF No. 99).

22 **II. Legal Standard**

23 *a. Reconsideration*

24 A motion for reconsideration "should not be granted, absent highly unusual  
25 circumstances." *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880  
26 (9th Cir. 2009). "Reconsideration is appropriate if the district court (1) is presented with newly  
27 discovered evidence, (2) committed clear error or the initial decision was manifestly unjust, or  
28 (3) if there is an intervening change in controlling law." *School Dist. No. 1J v. ACandS, Inc.*, 5

1 F.3d 1255, 1263 (9th Cir. 1993).

2 Rule 59(e) “permits a district court to reconsider and amend a previous order,” however  
3 “the rule offers an extraordinary remedy, to be used sparingly in the interests of finality and  
4 conservation of judicial resources.” *Carroll v. Nakatani*, 342 F.3d 934, 945 (9th Cir. 2003)  
5 (internal quotations omitted). A motion for reconsideration is also an improper vehicle “to raise  
6 arguments or present evidence for the first time when they could reasonably have been raised  
7 earlier in litigation.” *Marlyn Nutraceuticals*, 571 F.3d at 880.

8 *b. Attorney's fees*

9 Under the “American rule,” litigants generally must pay their own attorney's fees in  
10 absence of a rule, statute, or contract authorizing such an award. *See Alyeska Pipeline Co. v.*  
11 *Wilderness Soc'y*, 421 U.S. 240, 247 (1975); *MRO Commc'ns, Inc. v. Am. Tel. & Tel. Co.*, 197  
12 F.3d 1276, 1280–81 (9th Cir. 1999). Nonetheless, the decision to award attorney's fees is left to  
13 the sound discretion of the district court. *Flamingo Realty, Inc. v. Midwest Dev., Inc.*, 879 P.2d  
14 69, 73 (Nev. 1994).

15 “In an action involving state law claims, we apply the law of the forum state to determine  
16 whether a party is entitled to attorneys' fees, unless it conflicts with a valid federal statute or  
17 procedural rule.” *MRO Commc'ns, Inc.*, 197 F.3d at 1282; *see also Alyeska Pipeline Serv. Co.*,  
18 421 U.S. at 259 n.31. Under Nevada law, attorney's fees are available only when “authorized by  
19 rule, statute, or contract.” *Flamingo Realty, Inc.*, 879 P.2d at 73; Nev. REV. Stat. § 18.010.

20 Although state law governs whether a party is entitled to attorney's fees, federal law  
21 dictates the procedure for requesting attorney's fees. *Carnes v. Zamani*, 488 F.3d 1057, 1059  
22 (9th Cir. 2007); *see also MRO Commc'ns, Inc.*, 197 F.3d at 1280–81 (explaining that Rule  
23 54(d)(2) creates a procedure to request attorney's fees, not a right to recover attorney's fees).  
24 Federal Rule of Civil Procedure 54(d) governs requests for attorney's fees and nontaxable costs.

25 Under Rule 54(d), a prevailing party seeking attorney's fees must meet the following four  
26 requirements: (1) file the motion no later than 14 days after the entry of judgment; (2) specify the  
27 judgment and the statute, rule, or other grounds entitling the movant to the award; (3) state the  
28 amount sought or provide a fair estimate of it; and (4) disclose, if the court so orders, the terms

1 of any agreement about fees for the services for which the claim is made. Fed. R. Civ. P.  
2 54(d)(2).

3 The party moving for attorney's fees must also meet the requirements set forth in Local  
4 Rule 54-14, which states in part:

5 (b) Content of Motions. Unless the court orders otherwise, a motion for attorney's  
6 fees must include the following in addition to those matters required by Fed. R.  
7 Civ. P. 54(d)(2)(B):

- (1) A reasonable itemization and description of the work performed;
- (2) An itemization of all costs sought to be charged as part of the fee award  
and not otherwise taxable under LR 54-1 through 54-13;
- (3) A brief summary of:
  - (A) The results obtained and the amount involved;
  - (B) The time and labor required;
  - (C) The novelty and difficulty of the questions involved;
  - (D) The skill requisite to perform the legal service properly;
  - (E) The preclusion of other employment by the attorney due to  
acceptance of the case;
  - (F) The customary fee;
  - (G) Whether the fee is fixed or contingent;
  - (H) The time limitations imposed by the client or the circumstances;
  - (I) The experience, reputation, and ability of the attorney(s);
  - (J) The undesirability of the case, if any;
  - (K) The nature and length of the professional relationship with the  
client;
  - (L) Awards in similar cases; and
  - (M) Any other information the court may request.

16 LR 54-14(b).

17 Further, a motion for attorney's fees and costs must be accompanied by an affidavit from  
18 the attorney responsible for the billings in the case to authenticate the information contained in  
19 the motion, and to prove that the fees and costs sought are reasonable. LR 54-16(c). A failure to  
20 provide the documentation required by LR 54-16(b) and (c) in a motion for attorney's fees  
21 "constitutes a consent to the denial of the motion." LR 54-16(d).

### 22 **III. Discussion**

23 Before the court are two motions. First, the court will deny Carrington's motion for  
24 reconsideration because Carrington has not provided sufficient grounds to warrant vacating the  
25 court's judgment. Second, the court will deny Carrington's motion for attorney's fees because  
26 RLP reasonably contested Carrington's quiet title claim.

#### 27 *a. Reconsideration*

28 In its February 8, 2019, order, the court held that the foreclosure sale did not extinguish

1 the deed of trust and instructed the clerk to enter judgment accordingly. (ECF No. 96).  
2 Carrington argues that the court should vacate the judgment and amend the order so that it no  
3 longer instructs the clerk to enter judgment because the court did not dispose of Carrington, RLP,  
4 and Shadow Springs' non-quiet title claims. (ECF No. 98). The court disagrees.

5 This action concerns competing quiet title claims over the property. *See* (ECF Nos. 58,  
6 64). When the court granted summary judgment on Carrington's quiet title claim, it resolved the  
7 central dispute in this litigation and rendered all other issues moot. Carrington's remaining  
8 causes of action, which were pleaded in the alternative, are no exception. *See* (ECF No. 58).  
9 Therefore, the court will deny Carrington's motion for reconsideration.

10       **b. Attorney's fees**

11 Under Nevada law, attorney's fees are available only when "authorized by rule, statute,  
12 or contract." *Flamingo Realty, Inc.*, 879 P.2d at 73; Nev. Rev. Stat. § 18.010. Carrington  
13 requests that the court award attorney's fees against RLP under NRS 18.010(2)(b). (ECF No.  
14 99). The pertinent provisions of the statute provide:

15       2. In addition to the cases where an allowance is authorized by specific statute, the  
16 court may make an allowance of attorney's fees to a prevailing party:  
17            ...

18       (b) Without regard to the recovery sought, when the court finds that the claim,  
19 counterclaim, cross-claim or third-party complaint or defense of the opposing  
party was brought or maintained without reasonable ground or to harass the  
prevailing party . . .

20 Nev. Rev. Stat § 18.010(2)(b). A court can exercise its discretion and award attorney's fees  
21 pursuant to NRS 18.010 only when there is evidence supporting the court's finding that the  
22 opposing party's claim or defense was unreasonable or brought to harass. *Rivero v. Rivero*, 216  
23 P.3d 213, 234 (Nev. 2009).

24 Carrington argues that RLP asserted an unreasonable quiet title claim/defense because  
25 Carrington sent to RLP a check for the superpriority portion of the lien prior to the foreclosure  
26 sale. (ECF No. 99). RLP contends that it reasonably litigated this action in good faith as RLP  
27 asserted multiple legal theories that could have prevailed. (ECF No. 107).

On July 3, 2018, the court entered summary judgment against Carrington and held that Carrington did not tender the superpriority portion of the lien. (ECF No. 74). The court's July 3, 2018, order was based on unsettled law suggesting that Carrington should have used alternative legal remedies to prevent the foreclosure sale. *Id.*

Approximately two months later, the Nevada Supreme Court clarified the applicable law and held that sending a check for nine months of common assessments constitutes valid tender when an HOA does not indicate that the property had any charges for maintenance or nuisance abatement. *See Bank of America, N.A. v. SFR Invs. Pool 1, LLC*, 427 P.3d 113, 121 (Nev. 2018) (*Bank of America*). On February 8, 2019, the court vacated its previous order and entered summary judgment in favor of Carrington in light of the Nevada Supreme Court’s opinion in *Bank of America*. (ECF No. 96).

The July 3, 2018, order shows that RLP proceeded on legal theories that were likely to prevail under then applicable law. Moreover, after the Nevada Supreme Court issued its opinion in *Bank of America*, RLP raised procedural and substantive arguments in opposition to Carrington’s motion for reconsideration that addressed the court’s procedural posture and evolving mandatory authority. See (ECF No. 91). These litigation practices were appropriate considering that RLP maintained a reasonable chance of establishing superior title to the property. Therefore, the court will deny Carrington’s motion for attorney’s fees.

#### **IV. Conclusion**

Accordingly,

IT IS HEREBY ORDERED, ADJUDGED, and DECREED that Carrington's motion for reconsideration (ECF No. 98) be, and the same hereby is, DENIED.

IT IS FURTHER ORDERED that Carrington's motion for attorney's fees (ECF No. 99) be, and the same hereby is, DENIED.

DATED THIS 2<sup>nd</sup> day of April 2019.

James C. Mahan  
JAMES C. MAHAN  
UNITED STATES DISTRICT JUDGE